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In the Supreme Court of the United States

OCTOBER TERM, 1952

No. — **301**

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
CHAUFFEURS, WAREHOUSEMEN & HELPERS OF
AMERICA, OVER-THE-ROAD AND CITY TRANSFER
DRIVERS, HELPERS, DOCKMEN AND WAREHOUSE-
MEN, LOCAL UNION No. 41, A. F. L.

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
EIGHTH CIRCUIT

The Acting Solicitor General, on behalf of the National Labor Relations Board, prays that a writ of certiorari issue to review the decision of the United States Court of Appeals for the Eighth Circuit entered on April 29, 1952 (R.A. 36ff.),¹

¹ For purposes of this petition, the printed record before this Court consists of two separately paginated volumes: the volume containing the pleadings and the Board's decision and order as presented to the court below, herein designated "R.," and the appendix to respondent's brief in the court below,

which denied enforcement of an order issued by the Board against International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Over-the-Road and City Transfer Drivers, Helpers, Dockmen and Warehousemen, Local Union No. 41, A.F.L.

OPINIONS BELOW

The opinion of the court below (R.A. 36-41) is reported at 196 F. 2d 1. The findings of fact, conclusions of law, and order of the Board (R. 17-39) are reported at 94 NLRB 1494.

JURISDICTION

The judgment of the court below was entered on April 29, 1952 (R. A. 41). A petition for rehearing filed by the Board was denied on June 2, 1952 (R. A. 45). The jurisdiction of this Court is invoked under 28 U. S. C. 1254, and under Section 10 (e) of the National Labor Relations Act, as amended.

QUESTION PRESENTED

Whether denial of employment to a union member, because he has failed or refused to perform an obligation of union membership, constitutes discrimination which encourages or discourages

herein designated "R.A.". Occasional references to the exhibits introduced in evidence by the General Counsel at the hearing before the trial examiner, which are stapled to the appendix to respondent's brief, are designated "Exh." The proceedings in the court below are bound with, and paginated continuously from, the end of the appendix to respondent's brief. Wherever, in a series of references, a semicolon appears, references preceding the semicolon are to the Board's findings; those following refer to the supporting evidence.

"membership" in a labor organization within the meaning of Section 8 (a) (3) of the Act, regardless of the lack of proof that the denial of employment "encouraged" (or "discouraged") the employee immediately affected, or any other employee to acquire or retain "membership" in the Union.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Supp. V, 151, *et seq.* and P.L. 189, 82d Cong., 1st Sess.), are set forth in the Appendix, *infra*, pp. 18-23.

STATEMENT

After the usual proceedings under Section 10 of the National Labor Relations Act, as amended, the Board, on June 26, 1951, issued its decision in which it held that International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Over-the-Road and City Transfer Drivers, Helpers, Dockmen and Warehousemen, Local Union No. 41, A.F.L. (herein called the Union) had violated Section 8 (b) (2) of the Act. This section makes it an unfair labor practice for a labor organization "to cause or attempt to cause an employer to discriminate against an employee in violation of sub-section [8] (a) (3)"; and Section 8 (a) (3), in turn, makes it an unfair labor practice for an employer "by discrimination in regard to hire * * * or any term or condition of employment to encourage or discourage membership in any labor organization." The pertinent facts, as

found by the Board, and accepted by the court below, may be summarized as follows:

I. The Facts

From November 16, 1949, and throughout the period involved in this proceeding, Byers Transportation Company (herein called the Company) was a party to an agreement, known as the "Central States Area Over-the-Road Agreement"² with the Union, the exclusive bargaining representative of the Company's employees (R. 31; R.A. 3-4, 26, Exh. 2, p. 1). The agreement, governing working conditions on all over-the-road operations of the Company, contained a clause making union membership a condition of employment, but this clause never became operative because the Union did not obtain the requisite statutory authorization (R. 18, 31; 7, R. A. 2-3, 33).

The agreement also established a seniority system under which the employees bid for truck driving assignments in order of their relative places on the seniority list (R. 31; R. A. 6-7, 21). The agreement provided (R. 31; 7, R. A. 2-3, 8-9, 12-14, 27, 29, Exh. 2, p. 7):

* * * A list of employees arranged in the order of their seniority shall be posted in a conspicuous place at their place of employment. Any controversy over the seniority standing of any employee on this list shall be referred to the Union for settlement.

² This agreement, according to respondent's witness, has been executed with employers by more than 300 locals of the Union in twelve different States (R. A. 28-29).

Under authority of this clause, and after receiving the dates of initial employment from the Company, the Union compiled the seniority list from time to time and transmitted it to the Company for posting (R. A. 4, 5-6, 8, 13-14).

With the knowledge and assent of the Company, the Union made it a practice to reduce the seniority rank of its members who were delinquent in the payment of their dues, pursuant to Section 45 of its by-laws which provided that "Any member, under contract, one month in arrears for dues shall forfeit all seniority rights * * * (a) * * * On the second day of the second month a member becomes in arrears in dues" (R. 31; R. A. 6, 8-9, 11-14, 18-19, 27-28, 30-32, Exh. 3, pp. 18-19). In addition, Section 44 of the by-laws prescribed the penalty of automatic suspension from membership for being three months in arrears in dues, but preserved the Union's "jurisdiction over any member * * * until such time as he is released, either by Withdrawal Card, expulsion or death" (R. 7, R. A. 2-3, Exh. 3, p. 18).

For over four years, James Frank Boston, a union member, was employed as a truck driver by the Company (R. 31; 6, 10, R. A. 3, 17). By the end of June 1950, he had attained the 18th highest position on the seniority list (R. 31; R.A. 17, 18). Boston failed to pay his union dues for the month of June until July 5, 1950, when he paid his dues for both June and July (R. 31; R. A. 19). About ten days later, on about July 15, the Union compiled a new seniority list, reducing Boston's stand-

ing from 18th to 54th, the bottom position on the list, and, following the usual practice, submitted the new list to the Company which posted it (R. 31; R. A. 5, 6, 15, 18, 19-20, 21-22). As a consequence of his reduced seniority, Boston was deprived of truck driving assignments which he would otherwise have obtained and for which he would have received compensation (R. 31; R. A. 15-16, 20, 21).

II. The Board's Decision

The Board found that the reduction of Boston's seniority for being delinquent in the payment of his Union dues constituted discrimination which necessarily tended to encourage the faithful performance of membership obligations by union members and thus tended "to encourage membership" within the meaning of Section 8 (a) (3) of the Act (R. 18, note 1, 34).³ Accordingly, since the Union attempted to and did cause this unlawful discrimination against Boston, and acted without the sanction of a union-shop contract, the Board concluded that the Union violated Section 8 (b) (2) of the Act and, by the same conduct, also violated Section 8 (b) (1) (A), since it coerced an employee in the exercise of his statutory right to

³ By reference to its holding in *Firestone Tire and Rubber Company*, 93 NLRB 981, 983-984, a case involving almost identical facts, the Board explained that the term "membership," as used in Section 8 (a) (3) and in Section 8 (3) of the Wagner Act, had always been construed as synonymous with "membership in good standing," a phrase which, in turn, encompasses the timely payment of membership dues.

refrain from supporting the Union or other concerted activity (R. 18, 20, 33, 34). Member Murdock dissented (R. 23-26).

III. The Court's Decision

The court below denied enforcement of the Board's order (R. A. 41). Agreeing with the Board "that the respondent [Union] caused or attempted to cause the employer to discriminate against Boston in regard to 'tenure * * * or condition of employment'" within the meaning of Sections 8 (a) (3) and 8 (b) (2), the court further conceded that "theoretically" the act of discrimination, *i.e.*, reducing Boston's seniority as a penalty for his default in the payment of union dues, "might have [the] effect" of encouraging or discouraging membership in the Union (R. A. 39, 40). The court held, however, that this discrimination did not constitute a violation of Section 8 (a) (3) because there was no evidence that it encouraged or discouraged any employee's "adhesion to membership" in the Union (R. A. 41). In this connection, the court pointed out that Boston was a member of the Union prior to the discrimination and retained his status as a member thereafter (R. A. 40); that Boston testified that the discrimination neither encouraged nor discouraged him to remain in the Union (*ibid.*); and that there was no evidence beyond mere "'suspicion' and speculation" to show that the discriminatory practice had such effect upon other employees

(R. A. 41).⁴ Accordingly, the court concluded that, since an essential element of the employer's violation of Section 8 (a) (3) was not established, the Union did not violate Section 8 (b) (2) by causing the discrimination against Boston.⁵

SPECIFICATION OF ERRORS TO BE URGED

The court below erred:

1. In holding that discrimination against a union member because he failed to perform an obligation imposed by the union upon its members to regulate its internal affairs does not, without more, constitute "discrimination * * * to encourage or discourage membership in any labor organization" so as to fall within the proscription of Section 8 (a) (3) of the Act.

2. In failing to issue a decree enforcing the order of the Board.

REASONS FOR GRANTING THE WRIT

The holding of the court below that, absent proof of encouragement or discouragement of union

⁴ The court below expressed doubt that this consideration was even material, stating (R. A. 41): "Would the act of the union encourage or discourage other employees who might learn what had been done? Unless the statute may be interpreted to apply to such other employees there is no evidence substantial or otherwise to sustain the order of the Board. If, on the other hand, it must be so construed, then the order is supported only by 'suspicion' and speculation. There is no evidence in the record either substantial or in the nature of a scintilla to support it."

⁵ The court did not pass upon the Board's conclusion that the Union's conduct also violated Section 8 (b) (1) (A) of the Act (R. A. 37, 41, 42-45). However, the Board does not seek review on the basis of this omission.

membership, Section 8 (a) (3) does not prohibit the denial of employment to a union member because of his failure to perform an obligation of membership is in conflict with the decision of the Court of Appeals for the Second Circuit in *National Labor Relations Board v. The Radio Officers' Union, etc.*, 196 F. 2d 960, now pending on petition for a writ of certiorari, No. 230, this Term.

1. In both the *Radio Officers* case, *supra*, and the instant case, the particular union involved caused a union member to lose employment because of his infraction of union rules. In the *Radio Officers* case the court approved the holding of the Board that the employer, in penalizing the employee for his failure to carry out the obligations of union membership, had encouraged "membership" in the Union, in the sense that his action was "aimed at compelling obedience to union rules" (93 NLRB 1523, at 1527; cf. p. 6, note 3, *supra*), notwithstanding the absence of proof that any employee was thereby induced to join or remain in the union as a formally enrolled member. The court below reached the opposite conclusion on substantially similar facts.

The crux of this conflict is the proper interpretation of the phrase "membership in any labor organization" in Section 8 (a) (3)—the phrase which defines the scope of the statutory ban on discrimination in employment. The court below restricts the key word "membership" to "adhesion to membership" (R. A. 41), that is, remaining on a

Union's membership roster (or, presumably, joining a Union). The Board believes that this concept is unduly restrictive, and reads the term "membership" in its statutory context as synonymous with "good standing" in a Union.⁶

In a number of cases, usually without discussion, the courts have indicated that the prohibition against discrimination tending to encourage or discourage "membership" had a broader content than that given it by the opinion below. *National Labor Relations Board v. Walt Disney Productions, Inc.*, 146 F. 2d 44, 49 (C.A. 9), certiorari denied, 324 U.S. 877 (all employees in union under closed-shop contract, but discharge might cause them to forego all active part in union affairs, thereby in effect relinquishing their right to membership in a labor organization); *Paul Cusano v. National Labor Relations Board*, 190 F. 2d 898, 901-903 (C.A. 3) (discharge for making allegedly false statement in course of a report to fellow employees); *National Labor Relations Board v. Electric Auto-Lite Co.*, 196 F. 2d 500 (C.A. 6), petitions for certiorari pending, Nos. 124 and 140, this Term (discharge for not attending union meetings); *Union Starch and Refining Co. v. National Labor Relations Board*, 186 F. 2d 1008, 1011 (C.A. 7), certiorari denied, 342 U.S. 815, (failure of conscientious objector to take union oath); *Colonic Fibre Co. v. National Labor Relations Board*, 163 F. 2d 65 (C.A. 2) (discharge for non-payment of dues).

⁶ See the *Firestone* case, *supra*, note 3.

The decision in the *Radio Officers* case, following the line of cases cited above, treats the term "membership" as used in Section 8 (a) (3) and 8 (b) (2) as embracing the obligations of membership, and holds that to encourage the fulfillment of those obligations is to encourage "membership" within the meaning of the Act. The contrary view of the court below gives rise to a square conflict on a question of fundamental importance in the administration of the Act. We accordingly submit that the issue should be decided by this Court.

2. In holding that, to find a violation of Sections 8 (a) (3) and 8 (b) (2), the Board must have proof that the discrimination "did or would" encourage or discourage employees to become or remain union members (R. A. 40),⁷ the decision of the court below is again in conflict with numerous decisions of the several courts of appeals, including the decision in the *Radio Officers* case. In that case, as here, the denial of employment was a disciplinary measure, designed to punish a default-

⁷ We believe that this ruling, although it was the stated ground of the decision below, is a consequence of the court's mistaken concept of "membership" discussed above. With one debatable exception, no court has ever before called for proof of "encouragement" or "discouragement" in a case where it found that there was "discrimination," within the meaning of Section 8 (a) (3), and the discrimination was based upon membership or non-membership in a union. The one exception is *National Labor Relations Board v. Reliable Newspaper Delivery, Inc.*, 187 F. 2d 547, 551-552 (C. A. 3). In that case, however, the Third Circuit's basic holding was that there was no "discrimination" in the statutory sense, and its statement that, in any event, requisite proof of "encouragement" was wanting, was only an alternative ground of decision, if not *dicta*. Compare note 9, p. 12, *infra*, and our Memorandum in the *Radio Officers* case, No. 230, this Term, note 9, p. 14.

ing (though unexpelled) union member for his violation of a union rule, and there, too, the record contained no evidence disclosing the reaction of other employees, either members or non-members of the union. The Second Circuit, however, applied the well-settled rule that discrimination in employment falls within the proscription in Section 8 (a) (3) if it has an "inferable" (the *Walt Disney* case, *supra*, 146 F. 2d, at 49) or "inherent" (*National Labor Relations Board v. Gaynor News Company, Inc.*, 30 LRRM 2340 (C. A. 2, June 24, 1952)) tendency to encourage or discourage union membership. Under this view, which the Board believes correct,⁸ Section 8 (a) (3) does not, any more than the other unfair labor practice provisions of the Act, "require proof that the proscribed conduct had its desired effect." *National Labor Relations Board v. Engelhorn & Sons*, 134 F. 2d 553, 557 (C.A. 3).⁹ See also *National Labor Relations Board v. J. G. Boswell Co.*, 136 F. 2d 585, 595-596 (C. A. 9), and cases there cited; *National Labor Relations Board v. Walt Disney Productions, Inc.*, 146 F. 2d 44, 49 (C.A. 9), certiorari denied, 324 U. S. 877; *National Labor Relations Board v. Cities Service Oil*

⁸ In *General Motors Corp.*, 59 NLRB 1143, 1145, enforced per curiam, 150 F. 2d 201 (C. A. 3), the Board held that discriminatory treatment of employees fell under the ban of Section 8 (3) of the Wagner Act because it "was of such a character as to have a *natural tendency* to discourage union membership." (Emphasis supplied.)

⁹ Insofar as the Court of Appeals for the Third Circuit repudiated this principle in the *Reliable Newspaper* case, *supra*, the Board believes that decision to be erroneous and in conflict with the Second Circuit's decisions in *Radio Officers and Gaynor News*, *supra*.

Co., 129 F. 2d 933, 937 (C. A. 2). Furthermore, if there is "rationality" in the Board's inference that the proscribed result—encouragement or discouragement of union membership, in a Section 8 (a) (3) case—flowed from the "evidential facts," that inference is binding upon the reviewing court. *Republic Aviation Corp. v. National Labor Relations Board* and *National Labor Relations Board v. Le-Tourneau Company of Georgia*, 324 U. S. 793, 800, 804-805. The inference is not destroyed by the testimony of a single employee as to his own subjective reaction to the unfair labor practice.¹⁰ For this reason, we believe, the court below was plainly in error in relying, as it appears to have done, upon the testimony of employee Boston (R. A. 40).

Under this analysis, the only question before the court below, and before the Second Circuit in the *Radio Officers* case, was whether the Board could reasonably infer that discrimination against a union member because of his default in the performance of an intra-union obligation has a *tendency* to encourage membership in the Union. If the concept of "membership" expounded above be accepted, the answer to this question is self-evident. In the present case, for instance, it cannot be denied that the discrimination against Boston must have "encouraged" Union members to pay their dues promptly, thus maintaining their "membership" in good standing. But even if we adopt the narrow

¹⁰ See *National Labor Relations Board v. Donnelly Garment Company*, 330 U. S. 219, 229, 231, quoting with approval Judge Magruder's opinion in *Bethlehem Shipbuilding Corp. v. National Labor Relations Board*, 114 F. 2d 930, 937 (C.A. 1).

“adhesion” concept of the court below, the conclusion is the same. Discrimination in employment caused by a union for its internal disciplinary purposes may well serve to attract non-members to the union, as well as to maintain the good standing of the union’s present constituents. For, as the Court of Appeals for the Second Circuit observed in the *Radio Officers* case, such discrimination “display[s] to all non-members the union’s power and the strong measure[s] it was prepared to take to protect union members.” (196 F. 2d 960, at 965). Yet, discounting these considerations as “theoretical” (R. A. 40), the court below searched the record for “substantial evidence” of the tendency or actual effect of the discriminatory practice here involved. (*ibid.*) This approach is in conflict with the decisions of the other courts of appeals cited *supra*, pp. 12-13, and raises an issue going to the heart of Section 8 (a) (3) which should be settled by this Court.

3. In permitting the union, in the absence of a union-shop agreement under the proviso to Section 8 (a) (3), to compel the demotion of a union member for non-payment of dues, the court below has misread the text of the statute and nullified the intent of Congress as clearly expressed in the legislative history of the 1947 amendments. The proviso to Section 8 (a) (3) permits “discrimination against an employee for nonmembership in a labor organization” only where both of two conditions are met: (1) the existence of a valid union-shop agreement, and (2) a reasonable belief on the part

of the employer that nonmembership was based upon the employee's failure to pay the union dues or initiation fees. Correspondingly, Section 8 (b) (2) prohibits a labor organization from causing or attempting to cause an employer

to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership.¹¹

These provisions clearly imply, if they do not state in so many words, that discrimination based on non-payment of union dues is categorically forbidden, save only where the elaborately circumscribed conditions of exemption defined in the Section 8 (a) (3) proviso are met. Those conditions were not met in the present case, as the court below recognized (R. A. 37). Yet, *without* a valid union-security agreement, the Union here resorted to job dis-

¹¹ The quoted language, with an added qualification not here material, is the same as the original Senate version of Section 8 (b) (2). S. 1126, 80th Cong., 1st Sess., and H.R. 3020 as passed by the Senate. It was specifically designed to apply only in a case where a valid union-shop contract is in effect, and to limit the grounds upon which a union might lawfully induce an employer to discriminate pursuant to such a contract. See Sen. Rept. No. 105, 80th Cong., 1st Sess., p. 21; 93 Cong. Rec. 4192-4193. The Conference Committee expanded Section 8 (b) (2) by inserting the phrase "to discriminate against an employee in violation of subsection (a) (3), or" in order to give the same protection to employees not covered by union-shop agreements. See Senator Taft's statement at 93 Cong. Rec. 6443.

crimination as a means of insuring the collection of its membership dues.

In sanctioning the Union's practice, the decision below opens the door to widespread evasion of the intent of Congress in enacting the 1947 amendments to the Act. If a union, by the simple expedient of keeping a delinquent or recalcitrant member on its rolls, and not pretending to invoke a union-shop agreement, can lawfully reduce an employee's seniority as a penalty for non-payment of dues, as in this case, it may by the same token cause the discharge of its "members" for such membership offenses as dual union activity, campaigning in a union election against an incumbent union officer, testifying against a fellow union member, refusing to contribute to a union's political fund, or refusing to purchase tickets in a union raffle. Yet each and every one of these practices was specifically denounced by sponsors of the 1947 amendments, and characterized as an example of the intolerable abuses of the closed-shop system.¹² Because of such abuses Congress determined that the institution of compulsory union membership had to be drastically curtailed.¹³ The decision below, however, attaching an unforeseen and restrictive meaning to the key word "membership," immunizes the very abuses which Congress sought to correct by outlawing the closed shop, and would permit discrimination in employment which, so far as Section 8 (3) was con-

¹² See Sen. Rept. No. 105, 80th Cong., 1st Sess., pp. 21-22; H. Conf. Rept. No. 510, 80th Cong., 1st Sess., p. 44; 93 Cong. Rec. 3837, 4135, 4138, 4193, 4432, 4886, 5014.

¹³ Sen. Rept. No. 105, 80th Cong., 1st Sess., pp. 2-3, 6-7.

cerned, was not even lawful under the Wagner Act.¹⁴ We submit that the issue raised by this apparent frustration of congressional policy should be reviewed by this Court.

CONCLUSION

For the reasons stated, it is respectfully submitted that this petition for writ of certiorari should be granted.

✓ ROBERT L. STERN,
Acting Solicitor General.

✓ GEORGE J. BOTT,
General Counsel,
National Labor Relations Board.

AUGUST 1952.

¹⁴ Absent a valid closed-shop contract which authorized the particular compulsory membership practice in question, Section 8 (3) of the Wagner Act, in the very same language as Section 8 (a) (3) of the amended Act, banned all discrimination in employment "to encourage * * * membership" in a union. See the *Radio Officers* case, *supra*, and cases cited therein.

APPENDIX

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Supp. V, 151, *et seq.*), as further amended by Public Law 189, October 22, 1951 (82nd Cong., 1st Sess.), are as follows:¹⁵

RIGHTS OF EMPLOYEES

Sec. 7. Employees shall have the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3).

* * * * *

UNFAIR LABOR PRACTICES

SEC. 8 (a). It shall be an unfair labor practice for an employer—

* * * * *

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this Act, or in any other statute of the United

¹⁵ Provisions which were eliminated by P.L. 189 are enclosed in brackets; provisions which were added by that amendment are in italics.

States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in section 8(a) of this Act as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later, (i) if such labor organization is the representative of the employees as provided in section 9(a), in the appropriate collective-bargaining unit covered by such agreement when made [; and (ii) if, following the most recent election held as provided in section 9(e) the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to authorize such labor organization to make such an agreement:] *and has at the time the agreement was made or within the preceding twelve months received from the Board a notice of compliance with sections 9(f),(g),(h), and (ii) unless following an election held as provided in section 9(e) within one year preceding the effective date of such agreement, the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to rescind the authority of such labor organization to make such an agreement:* *Provided further,* That no employer shall justify any discrimination against an employee for non-membership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable grounds

for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

* * * * *

(b) It shall be an unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7: *Provided*, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; * * *

(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a)(3) or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

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REPRESENTATIVES AND ELECTIONS

SEC. 9. * * *

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(e) [(1) Upon the filing with the Board by a labor organization, which is the representative of employees as provided in section 9(a), of a petition

alleging that 30 per centum or more of the employees within a unit claimed to be appropriate for such purposes desire to authorize such labor organization to make an agreement with the employer of such employees requiring membership in such labor organization as a condition of employment in such unit, upon an appropriate showing thereof the Board shall, if no question of representation exists, take a secret ballot of such employees, and shall certify the results thereof to such labor organization and to the employer.

(2) * * *]

1) Upon the filing with the Board, by 30 per centum or more of the employees in a bargaining unit covered by an agreement between their employer and a labor organization made pursuant to section 8 (a)(3), of a petition alleging they desire that such authority be rescinded, the Board shall take a secret ballot of the employees in such unit and certify the results thereof to such labor organization and to the employer.

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PREVENTION OF UNFAIR LABOR PRACTICES

SEC. 10(a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise. * * *

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(c) * * * If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act: *Provided*, That where an order directs reinstatement of an employee, back pay may be required of the employer or labor organization, as the case may be, responsible for the discrimination suffered by him: * * *

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(e) The Board shall have power to petition any circuit court of appeals of the United States (including the United States Court of Appeals for the District of Columbia), or if all the circuit courts of appeals which application may be made are in vacation, any district court of the United States (including the District Court of the United States for the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceedings, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such

person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. * * *